

## Examples of Contractual Requirements for Capital Grants

### Inspection upon Delivery

The Contractor shall inspect Project equipment at the time such equipment is delivered to the Contractor. Upon receipt and acceptance of Project equipment, the Contractor agrees that it shall be conclusively presumed, as between WSDOT and the Contractor, that the Contractor has fully inspected and acknowledged that such equipment is in good condition and repair, and that the Contractor is satisfied with such equipment.

### Miscellaneous Charges and Conditions

The Contractor shall pay all storage charges, parking charges, and fines, as well as any fees (including vehicle registration license and inspection fees [safety and emission control]), and taxes which may be imposed with respect to the equipment by a duly constituted governmental authority as the result of the Contractor's use or intended use of the Project equipment. All replacements, repairs, or substitutions of parts or equipment shall be at the cost and expense of the Contractor.

### Assignments, Subcontracts, and Leases

Unless otherwise authorized in advance in writing by WSDOT, the Contractor shall not assign any Project equipment under this Agreement, or execute any contract, amendment, or change order thereto pertaining to the Project Equipment, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this agreement or lease or lend the Project equipment or any part thereof to be used by anyone not under the Contractor's supervision.

### Reports and Use of Project Equipment

A. The Contractor agrees that the Project equipment shall be used for the provision of transportation service within the area described in the "Scope of Project," for the equipment's useful life. The Contractor further agrees that it will not use or permit the use of the Project equipment in a negligent manner or in violation of any law, or so as to avoid any insurance covering the same, or permit the Project equipment to become subject to any lien, charge, or encumbrance. Should the Contractor unreasonably delay or fail to use the Project equipment during the useful life of that equipment, the Contractor agrees that it may be required to refund the entire amount of the Federal share expended on the Project.

The Contractor shall immediately notify WSDOT when any Project equipment is withdrawn from Project use or when Project equipment is used in a manner substantially different from that identified in the "Scope of Project." If the project equipment is permanently removed from transportation service, the Contractor agrees to immediately contact WSDOT for instructions regarding the disposal of the project equipment. The Contractor understands that the project equipment shall be used to provide passenger service levels as described below:

1. A minimum of 100 passenger service miles per vehicle per week, or
2. A minimum of 100 one-way passenger trips per vehicle per week.

B. Reports. The Contractor shall advise WSDOT regarding the progress of the Project at such times and in such manner as WSDOT and FTA may require, including, but not limited to, interim reports. The Contractor shall keep satisfactory written records with regard to the use of Project equipment and shall submit the following reports to, and in a form and at such times prescribed by, WSDOT until the useful life of the Project equipment expires:

1. Reports shall be prepared describing the current usage of Project equipment and other data deemed relevant by WSDOT and by FTA.

Those reports include, but are not limited to:

- a) Vehicle Ridership
- b) Vehicle Mileage
- c) Service Hours
- d) Equipment Maintenance

2. In the event any portion of the Project equipment is damaged and the repair of such damage will cost five hundred dollars or more, the Contractor shall notify WSDOT within seven days after the occasion of the damage, including the circumstances thereof.

3. The Contractor shall collect and submit to WSDOT, at such time as WSDOT may require, such financial statements, data, records, contracts, and other documents related to the Project as may be deemed necessary by WSDOT and FTA.

4. The Contractor shall also submit to WSDOT at the beginning of each calendar year during such period, a certification that the Project equipment is still being used in accordance with the terms of this Section and that no part of the local contribution to the cost of the Project has been refunded or reduced.

C. Remedies for Misuse or Noncompliance. The Contractor shall not use any Project equipment in a manner different from that described in the "Scope of the Project". If WSDOT determines that Project equipment has been used in a manner different from that described in "Scope of the Project", WSDOT may direct the Contractor to dispose of the Project equipment acquired by the Contractor in accordance with FTA procedures. WSDOT may also withhold

Grant payments should it determine that the Contractor has failed to comply with any provision of this Agreement. If federal participation and funding is either reduced or canceled as a result of a breach by the Contractor, the Contractor is then liable for all damages from the breach, even though those damages exceed the price payable under the Agreement.

#### Maintenance of Project Equipment

The Contractor shall make all necessary repairs and reasonably maintain the equipment to assure it remains in good and operational condition until Disposition as that term is defined in the “Guide to Managing Your Public Transportation Grant.” All service, materials, and repairs in connection with the use and operation of the Project equipment during its useful life shall be at the Contractor’s expense. The Contractor agrees to, at a minimum, service the Project equipment and replace parts at intervals recommended in the manual provided by the manufacturer of such equipment, or sooner if needed.

The Contractor shall take the Project equipment to an appropriate service and repair facility for any service and repair under the manufacturer’s warranty. WSDOT and FTA shall not be liable for repairs, nor shall any such repairs be charged to either entity. The Contractor shall comply with the equipment management requirements identified in 49 CFR Part 18.32(d) or 49 CFR Part 19.34(f) whichever is appropriate, the “Common Rule,” which by this reference is incorporated herein; and any reference therein to “grantee” shall mean the Contractor. The Contractor shall retain records of all maintenance and parts replacement performed on the Project equipment. The Contractor shall provide copies of such records to WSDOT, upon request.

#### Purchases

The Contractor shall make purchases of any equipment pursuant to this Agreement through procurement procedures approved in advance by WSDOT and consistent with provisions following:

A. Preference for United States Products and Services. To the extent applicable, the Contractor agrees to comply with the following U.S. preference requirements:

1. Buy America. The Contractor agrees to comply with 49 U.S.C. § 5323(j), with FTA regulations, “Buy America Requirements,” 49 C.F.R. Part 661, and with implementing guidance FTA may issue.
2. Cargo Preference—Use of United States-Flag Vessels. The Contractor agrees to comply with U.S. Maritime Administration regulations, “Cargo Preference—U.S.-Flag Vessels,” 46 C.F.R. Part 381, to the extent those regulations apply to the Project.

3. Fly America. The Contractor understands and agrees that the Federal Government will not participate in the costs of States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 through 301-10.143. International air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 through 301-10.143.

B. Bus Testing. To the extent applicable, the Contractor agrees to comply with the requirements of 49 U.S.C. § 5323(c) and FTA regulations, “Bus Testing,” 49 C.F.R. Part 665, and any revision thereto.

C. Pre-Award and Post-Delivery Requirements. The Contractor agrees to comply with the requirements of 49 U.S.C. § 5323(m) and FTA regulations, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases,” 49 C.F.R. Part 663, and any revision thereto.

D. Geographic Restrictions. The Contractor agrees to refrain from using any State or local geographic preference, except those expressly mandated or encouraged by Federal statute or as permitted by FTA.

E. Government Orders. In case any lawful government authority shall make any order with respect to the Project or Project equipment, or any part thereof, or the parties hereto or either of them, the Contractor shall cooperate with WSDOT in carrying out such order and will arrange its operation and business so as to enable WSDOT to comply with the terms of the order.

#### Liens on Equipment

WSDOT shall hold legal title to all vehicles the Contractor acquires or file a lien against any equipment the Contractor modifies using the Federal Share identified in the “Project Cost” of this Agreement. The legal title or lien shall cover 80 percent of the disposable value of the Project equipment and may be satisfied only by proper disposal of the Project equipment in a manner determined by WSDOT.

#### Loss or Damage to Project Equipment

A. The Contractor, at its own expense, shall cover any loss, theft, damage, or destruction of the Project equipment using either of the following methods:

1. The Contractor shall maintain Comprehensive and Collision insurance adequate to cover the value of the Project equipment; the Contractor shall supply a copy of the Certificate of Insurance specifying such coverage to WSDOT; or

2. The Contractor shall provide a written certificate of self-insurance to WSDOT. The Contractor will cover from its own resources the costs of repairing or replacing any Project equipment, if it is stolen, damaged, or destroyed in any manner.

B. If the damage to the Project equipment does not result in a total loss, payments for damage shall be paid directly to the Contractor. The Contractor shall, within 30 days, either:

1. Devote all of the insurance proceeds received to repair the Project equipment and place it back in service, and the Contractor shall, at its own expense, pay any portion of the cost of repair which is not covered by insurance; or

2. In the event the Contractor certified to self- insurance, devote all funds necessary to repair the Project equipment and place it back into service.

C. If the Project equipment is a total loss, either by theft or damage, the insurance proceeds or equivalent shall be paid directly to WSDOT. The Contractor shall within 60 days of loss, theft, or damage, notify WSDOT that it either:

1. Intends to replace the lost Project equipment; or

2. Does not intend to replace the lost Project equipment.

D. If WSDOT determines that the total loss occurred under circumstances in which the Contractor fulfilled its obligations under this Agreement, WSDOT would either pay or rebate to the Contractor its proportionate share of such proceeds received, or take such other action with respect to such proceeds, as FTA shall allow.